

Programmatic Review

Deliverable Form

Agency Involved: Office of Surface Mining Reclamation and Enforcement

Domain: Human and Community

Session: 4

Issue: How do SMCRA regulatory programs and associated guidance address the issue of protecting air resources?

Areas to be considered include: Air resources include fugitive dust, global climate change, Sulfur dioxide, Volatile organic compounds.

Summary of the Effects of Relevant Statutes, Regulations and Policies

Section 515(b)(4) of SMCRA provides that “. . . all surface coal mining and reclamation operations must stabilize and protect all surface areas . . . to effectively control erosion and attendant air and water pollution.” Shortly after the passage of SMCRA, OSM determined that fugitive dust associated with surface mining activities constituted a public health and safety problem, and in 1979, promulgated rules requiring operators to control air pollution from all their mining operations. In 1980, a United States District Court struck down and remanded the rules for revision, because it determined that SMCRA’s legislative history indicates that OSM’s authority to regulate air pollution is limited to activities related to erosion [In re: Permanent Surface Mining Regulation Litigation, C.A. 79-1144 (D.D.C., May 16, 1980)].

OSM re-promulgated its rules regulating air pollution from surface coal mining and reclamation operations in 1983. The Federal performance standards at 30 CFR 816.95 require all exposed areas of surface mining operations to be protected and stabilized to effectively control erosion and air pollution attendant to erosion. This is usually accomplished through the application of mulch to reclaimed areas after backfilling and regrading and the watering of unpaved haul roads.

In 1988, the U.S. Court of Appeals reaffirmed the district court’s ruling finding that OSM’s role in controlling air pollution is limited to pollution attendant to erosion. The Appeals Court found that EPA has the authority under the Clean Air Act (CAA) to regulate fugitive dust from surface mining operations [NWF v. Hodel, C.A. 84-5743 (U.S. Court of Appeals D.C. Circuit, January 29, 1988)].

Applicable Statutory Provisions

Permit Application Requirements

SMCRA section 508(a)

Each reclamation plan submitted as part of a permit application pursuant to any approved State program or a Federal program under the provisions of this Act shall include, in the degree of detail necessary to demonstrate that reclamation required by the State or Federal program can be accomplished, a statement of:

* * *

(9) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

* * *

Performance Requirements

SMCRA section 515(b)

General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to --

* * *

(4) stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution;

* * *

Applicable Regulations

Permit application requirements

Title 30 Code of Federal Regulations Section 780.15

(a) For all surface mining activities with projected production rates exceeding 1,000,000 tons of coal per year and located west of the 100th meridian west longitude, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under Paragraph (a)(2) of this Section to comply with Federal and State air quality standards; and

(2) A plan for fugitive dust control practices as required under Section 816.95 of this Chapter.

(b) For all other surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the regulatory authority, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under Paragraph (b)(2) of this Section to comply with applicable Federal and State air quality standards; and

(2) A plan for fugitive dust control practices, as required under Section 816.95 of this Chapter.

Performance Standards

Title 30 Code of Federal Regulations Section 816.95

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies, which form in areas that have been regraded and topsoiled and which either (1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) Cause or contribute to a violation of water-quality standards for receiving streams; shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

Applicable Policies

None

EOF